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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 738 and 740**

**[Docket No. 190503423-9423-01]**

**RIN 0694-AH78**

**Revisions to Country Group Designations for Venezuela and Conforming Changes for License Requirements**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to remove Venezuela from Country Group B, which affords favorable treatment for certain exports of National Security-controlled items, and moves Venezuela to Country Group D:1, which lists countries of national security concern. This final rule makes these changes to the EAR to reflect current national security concerns related to Venezuela, *e.g.*, the introduction of foreign military personnel and equipment into Venezuela, and to better protect U.S. national security. The changes in this final rule also better align the Country Group designations for Venezuela with other EAR national security-related provisions that already apply to Venezuela, *e.g.*, the military end-use and end-user controls that apply to certain items for export, reexport, or transfer (in-country) and provisions that are specific to countries subject to U.S. arms embargoes. In addition, this final rule adds Venezuela to Country Groups D:2-4, which list countries of nuclear, chemical and biological weapons, and missile technology concern, respectively.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION:** Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-4252.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement a decision to remove Venezuela from Country Group B, which affords favorable treatment for certain exports of National Security-controlled items, and moves Venezuela to Country Group D:1, which lists countries of national security concern (Supplement No. 1 to part 740). In addition, this final rule adds Venezuela to Country Groups D:2-4, which list countries of nuclear, chemical and biological weapons, and missile technology concern, respectively.

This final rule protects U.S. national security interests by making changes to the EAR to address current national security concerns related to Venezuela, *e.g.*, the introduction of foreign military personnel and equipment into Venezuela, and better align the Country Group designation for Venezuela with other EAR national security related provisions that apply to Venezuela. For example, Venezuela is included in the military end-use and end-user control in § 744.21: Restrictions on certain ‘Military end uses’ in the People’s Republic of China or for a ‘Military end use’ or ‘Military end user’ in Russia or Venezuela. Venezuela is also already designated in Country Group D:5 as a U.S. Arms Embargoed Country, meaning that the general restrictions on the use of license exceptions in § 740.2(a)(12) for 9x515 and “600 series” items apply, along with the more restrictive license review policy for national security controlled items in § 742.4(b)(1)(ii) for 9x515 and “600 series” items.

The removal of Venezuela from Country Group B and its addition to Country Group D:1 will make exports and reexports to Venezuela and transfers within Venezuela ineligible for certain license exceptions set forth in Part 740. In addition, the national security licensing policy set forth in § 742.4(b) for Country Group D:1 countries will apply to those exports, reexports, and transfers (in-country). The U.S. Government has determined that the conduct of Venezuela raises sufficient concern that interagency review of proposed exports, reexports, or transfers (in-country) of national security controlled items subject to the EAR, previously eligible for certain license exceptions to Venezuela, and the possible imposition of license conditions or license denials on exports, reexports, and transfers (in-country), will enhance BIS's ability to protect U.S. national security interests.

In addition, the U.S. Government has determined that Venezuela's increasing dependence on countries in Country Groups D:3 and E merited its placement in Country Groups D:2-4.

**Amendments to Country Groups B and D:1-4 Affecting License Exception Eligibility, License Requirements (including CCL-based and end-use-based license requirements), and Licensing Policy for Venezuela**

Supplement No. 1 to Part 740 contains several tables of "Country Groups" that are used to identify, among other things, license exception eligibility and licensing policy. This rule removes Venezuela from Country Group B and adds Venezuela to Country Groups D:1-4.

*Effects of Removing Venezuela from Country Group B*

License exceptions found in § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR) are available only if the destination is in Country Group B. This change removes Venezuela from the list of eligible destinations for exports, reexports, and transfers (in-country) that are authorized by License Exceptions LVS, GBS and TSR.

*Effects of Adding Venezuela to Country Groups D:1-4*

License exceptions found in § 740.9, Temporary imports, exports, reexports, and transfers (in-country) (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); § 740.15, Aircraft and vessels (AVS); § 740.16, Additional permissive reexports (APR); and § 740.17, Encryption, commodities, software, and technology (ENC) all contain limitations or restrictions on their use for exports or reexports to destinations in Country Groups D:1, D:2, D:3, and/or D:4. Those limitations and restrictions will now apply to License Exceptions TMP, RPL, GFT, BAG, AVS, APR, and ENC to Venezuela.

Section 742.4(b)(2) of the EAR states the licensing policy for exports and reexports of national security controlled items to destinations in Country Group D:1. That licensing policy is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. Applications to export or reexport national security controlled items to Venezuela will now be subject to this licensing policy.

In addition, Venezuela's placement in Country Group D:1 will result in the imposition of restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Venezuela, pursuant to § 744.17: Restrictions on certain exports, reexports and transfers (in-country) of microprocessors and associated "software" and "technology" for 'military end uses' and to 'military end users.' Furthermore, restrictions on certain exports and reexports to vessels and aircraft located in Venezuelan ports or registered in Venezuela will become effective pursuant to § 744.7, Restrictions on certain exports to and for the use of certain foreign vessels or aircraft. Finally, the addition of Venezuela to Country Group D:1 will expand the licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Venezuela pursuant to § 736.2(b)(3), General Prohibition Three.

Consistent with adding Venezuela to Country Group D:2, a license will be required for the export or reexport of items subject to the nuclear nonproliferation column 2 (NP 2) controls [Export Control Classification Numbers (ECCNs) 1A290, 1C298, 2A290, 2A291, 2D290, 2E001 (for that portion that applies for 2A290, 2A291 and 2D290) and 2E002 (for that portion that applies to 2A290 and 2A291) and 2E290]. This final rule adds an "X" in the NP 2 column of the nuclear nonproliferation column in Supplement No. 1 to Part 738 of the EAR for Venezuela. License applications for these items will be reviewed under the licensing policy in § 742.3 of the EAR. Consistent with adding Venezuela to Country Group D:2, the general prohibition in paragraph (a)(1)(i)(A) of § 744.6, Restrictions on certain activities of U.S. persons, will be

applicable if the U.S. person exporter, reexporter, or transferor has “knowledge” of a prohibited end use in or by Venezuela.

Consistent with adding Venezuela to Country Group D:3, a license will be required for the export or reexport of items subject to the chemical and biological weapons column 3 (CB 3) controls (ECCN 1C991.d). This final rule adds an “X” in column 3 of the chemical and biological weapons column (CB 3) in Supplement No. 1 to Part 738 of the EAR. License applications for these items will be reviewed under the licensing policy in § 742.2 of the EAR.

Consistent with adding Venezuela to Country Group D:4, the general prohibitions in § 744.3 - Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses - under paragraphs (a)(1) and (a)(3) will be applicable if the exporter, reexporter, or transferor has “knowledge” the transaction involves one of those prohibited end uses in or by Venezuela. In addition, consistent with adding Venezuela to Country Group D:4, the general prohibitions in § 744.6 under paragraphs (a)(1)(i)(B) and (a)(2)(i) will be applicable if the U.S. person exporter, reexporter, or transferor (for purposes of paragraph (a)(1)(i)(B)) or other activities unrelated to exports (for purposes of paragraph (a)(2)(i)) has “knowledge” the transaction involved one of those prohibited transactions or other activities in or by Venezuela.

Prior to publication of this final rule, Venezuela was already included in Country Group D:5 and the license review policy under § 742.4(b)(1)(ii) continues to apply for items classified under

9x515 and “600 series” ECCNs for exports and reexports to Venezuela. Pursuant to § 742.4(b)(1)(ii), these license applications will continue to be “reviewed consistent with United States arms embargo policies in § 126.1” of the International Traffic in Arms Regulations.

### **Export Control Reform Act of 2018**

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115-232) that provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

### **Rulemaking Requirements**



1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. This final rule will support the national security and foreign policy objectives of the United States by broadening the U.S. Government’s visibility into transactions involving national security controlled items on the Commerce Control List and exports, reexports and transfers (in-country) to and in a country of concern.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694-0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to increase slightly by 4 hours for an estimated cost increase of \$120. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694-0088.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to § 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115-232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

6. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. The

cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, the change in the Country Group designations for Venezuela and its impact on the availability of license exceptions and more restrictive license review policies described herein will enhance the national security of the United States by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to the military capability of countries of concern, contrary to U.S. national security interests. This final rule will allow the U.S. Government to review transactions involving military end uses or end users in Venezuela prior to their completion to mitigate this risk. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O. 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued “with respect to a national security function of the United States” and it is, therefore, exempt from the requirements of E.O. 13771.

### **Saving Clause**

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any such items

not actually exported, reexported or transferred (in-country) before midnight, on [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] require a license in accordance with this final rule.

## **List of Subjects**

### *15 CFR Part 738*

Exports.

### *15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738 and 740 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

## **PART 738 – COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART**

1. The authority citation for part 738 is revised to read as follows:

**Authority:** Pub. L. 115-232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O.

13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871

(August 13, 2018).

2. Supplement No. 1 to Part 738 is amended by revising the entry for “Venezuela” to read as follows:

#### **SUPPLEMENT NO. 1 TO PART 738 – COMMERCE COUNTRY CHART**

**[Reason for control]**

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
* * * * *																
Venezuela	X	X	X	X	X	X	X	X	X	X	X	X		X		
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#### **PART 740 – LICENSE EXCEPTIONS**

3. The authority citation for part 740 is revised to read as follows:

**Authority:** Pub. L. 115-232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996

Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

4. Supplement No. 1 to Part 740 is amended by:

a. Removing Venezuela from the table labeled “Country Group B – Countries;” and

b. Revising the entry for “Venezuela” under “Country Group D” to read as follows:

#### SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS

\* \* \* \* \*

#### Country Group D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology	[D: 5] U.S. Arms Embargoed Countries <sup>1</sup>
	*	*	*	*	*
Venezuela	X	X	X	X	X
	*	*	*	*	*

<sup>1</sup>Note to Country Group D:5: Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the Federal Register. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR §126.1 and State Department Federal Register notices related to arms embargoes (compiled at [http://www.pmddtc.state.gov/embargoed\\_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html)) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the Federal Register), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

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Dated: May 17, 2019.

Richard E. Ashooh,

Assistant Secretary

for Export Administration.

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